

REMARKS

Claims 11 to 20 are now pending and being considered.

Reconsideration is respectfully requested based on the following.

Claims 11 to 20 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Application 2002/0011925 (“Hahn”).

In rejecting a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a prima facie case of obviousness. In re Rijckaert, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish prima facie obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine the reference teachings. In re Fine, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). The prior art must suggest combining the features in the manner contemplated by the claim. See Northern Telecom, Inc. v. Datapoint Corp., 908 F.2d 931, 934 (Fed. Cir. 1990), cert. denied, 111 S. Ct. 296; In re Bond, 910 F.2d 831, 834 (Fed. Cir. 1990). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. In re Vaeck, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). Second, there must be a reasonable expectation of success. In re Merck & Co., Inc., 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. In re Royka, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Claim 11 includes the feature of “the at least one object being situated in a vicinity of the motor vehicle,” in which the “at least one optical **warning** is generated at least **prior to the at least one object becoming visible to the driver.**” The “Hahn” reference does not properly support the Office Action’s assertion that a displayed symbol lying below a conscious and above an unconscious perception threshold of the operator discloses the claim feature.

In this regard, the “Hahn” reference states that “the physiology of perception show that the **attention** of the human being can be guided by short, hardly perceivable changes in contrast” (“Hahn” reference, paragraph 5). Further, the display of specific images or symbols are stated to be “lying **below a conscious and above an unconscious perception threshold** of the operator.” (“Hahn” reference, paragraph 7, emphasis added.) Therefore, a symbol displayed for a duration lying below a conscious perception threshold of the operator is not consciously perceived by the operator, but will merely draw the operator’s attention to

the symbol's display location. Drawing attention "**below a conscious and above an unconscious**" threshold does NOT correspond to the feature of an "optical **warning**" as provided for in the context of claim 11.

Furthermore, *prima facie* obviousness cannot be established based on a modification of a reference that destroys the intent, purpose, or function of the invention disclosed in the reference, since there is no suggestion or motivation to make the proposed modification. *See In re Gordon*, 733 F.2d 900, 221 U.S.P.Q. 1125 (Fed. Cir. 1984). It is clearly stated that "[i]n this manner, it is possible to trigger the attention of the operator without overtaxing him/her by constantly **displaying unnecessary information.**" ("Hahn" reference, column [0005], emphasis added.) Thus, the optical warning signals, as provided for in the context of the claims, are considered by "Hahn" as "overtaxing him/her by constantly displaying unnecessary information," thereby, teaching away from the claimed invention. Prior art references must be considered as a whole, including portions that teach away from the claimed subject matter. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540 (Fed. Cir. 1983).

Further, the "Hahn" reference does not disclose or suggest the claim feature of "generated at least prior to the at least one object becoming visible to the driver." The Final Office Action acknowledges that the "Hahn" reference "fails to state that the at least one optical warning is generated at least prior to the at least one object becoming visible to the driver," but, it conclusorily asserts that it is inferred that the display displays the image prior to the object becoming visible to the driver. It is not understood why the Final Office Action asserts that simply displaying "the specific image or symbol at locations of field of vision of the operator and the duration of the specific image or symbol lying below a conscious and above an unconscious perception threshold of the operator" discloses the feature of "**prior** to the at least one object becoming **visible** to the driver." If something is not visible, it is not understood how one may become aware of a **warning** through a symbol lying below a conscious and above an unconscious perception threshold.

The Final Office Action refers to paragraph [0003] of the "Hahn" reference and its statement that sensors can be used "for improving the sight of the driver." It is asserted that this "implies that Hahn employs the use of imaging sensors to aid in detecting and alerting the vehicle operator of the presence of objects in front of the vehicle prior to the object

becoming visible to the operator.” However, “improving the sight” does not mean prior to becoming **visible**. At most, it simply means that something **that is visible** becomes more so.

Accordingly, claim 11 is allowable as are its dependent claims 12 to 17.

Claim 18 includes features similar to those of claim 11, and is therefore allowable for reasons like those of claim 11.

Claims 19 and 20 depend from claim 18 and are therefore allowable for at least the same reasons as claim 18.

In summary, all of pending claims 11 to 20 are allowable.

CONCLUSION

In view of the foregoing, all pending claims 11 to 20 are allowable. It is therefore respectfully requested that the rejections (and any objections) be withdrawn. Prompt reconsideration and allowance of the present application are therefore respectfully requested.

Respectfully submitted,

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